IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/02/2005

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THE HON'BLE MR.JUSTICE P.K.MISRA

W.P.No.3352 of 1998

Dr. Ambedkar Transport Corportion
Task Force Union
rep. By its General Secretary
Reg.No.5/97/MGR ... Petitioner

-Vs-

1. Secretary to Government
of Tamil Nadu,
Transport Department,
Fort St. George, Chennai 9.

2. Metropolitan Transport Corportion,
Division II, rep. By its Managing
Director, Ayanavaram, Chennai 23.

3. Department of Employment and Training,
rep. By Special Commissioner for
Employment and Training, Chepauk,
Chennai 5. ...Respondents

Prayer: The writ petition is filed under Article 226 of the
Constitution of India for the issue of writ of Certiorarified Mandamus calling for the records and quash Letter No.Tho.Pa.1/53564/97 dated 30.9.97 of the 3rd respondent and consequently direct the 3rd respondent to register the experience certificates of the workers whose names are in the annexure, sponsor their names to the second respondent Corporation and consequently direct the second respondent to appoint the workers whose names are in the annexure.

!For Petitioner :Ms. Suguna Ramalingam

For Respondents 1 & 3 :Mr.P.S. Jayakumar,
Govt. Advocate

Respondent-2 :Mr.V.R. Kamalanathan

:O R D E R

Heard the learned counsels appearing for the parties.

2. The present writ petition has been filed by Dr. Ambedkar Transport Corporation Task Force Union, represented by its General Secretary for the following relief :-
" ... calling for the records and quash Letter No.Tho.Pa.1/53564/97 dated 30.9.97 of the 3rd respondent and consequently direct the 3rd respondent to register the experience certificates of the workers whose names are in the annexure, sponsor their names to the second respondent Corporation and consequently direct the second respondent to appoint the workers whose names are in the annexure."

3. Petitioner is a registered trade Union. Writ Petition has been filed on behalf of 83 workers who were employed as drivers and conductors in the erstwhile Dr.Ambedkar Transport Corporation Limited which has been subsequently renamed as Metropolitan Transport Corporation, Division II. It is claimed that even though many of the workers have completed 240 days of service, they were abruptly terminated in the month of June, 1996 on the ground that they had not been appointed through Employment Exchange. At that stage, the workers had challenged such termination on the ground that such action of the management was in contravention of Section 25F of the Industrial Disputes Act, 1 947 (hereinafter referred to as the Act). It was also claimed therein that the management had no right to employ any person and they should have given preference under Section 25H of the Act. W.P.Nos.10564 of 1996 and 15957 of 1996 were allowed by the learned single Judge by order dated 12-12-1996 where the second respondent was directed to re-employ the workers irrespective of the question as to whether they were employed through the Employment Exchange or not. Out of 83 workers, 27 workers who had filed W.P.No.10564 of 1996 were given employment by virtue of the interim orders passed by the High Court and were continuing as such. The Management had filed W.A.Nos.143 and 144 of 1997. Apart from the above two writ petitions, several other writ petitions were filed by the retrenched workers and in many such matters, interim orders were passed restraning the respondent corporation from employing new workers in violation of Section 25-H of the Act. In view of the aforesaid development and since some matters were pending in appeal, management approached the workers to settle the stalemate. The workers at that stage insisted that such workers should be re-employed irrespective of the question as to whether their names had been sponsored by the Employment Exchange or not. The Management even though was willing for such condition, it was difficult for the Management to give it in writing, on the other hand, it was agreed orally that the management would seek for sponsor of names of such persons through Employment Exchange. On the basis of this, an agreement was entered into between the management and the workers At that stage, some of WPs were withdrawn. Ultimately, the writ appeals were not withdrawn and they were disposed of on merits, where the Division Bench observed that the workers who had completed 240 days of service should be reinstated and in respect of others, who had not completed 240 days, they should be given preferential right as envisaged under Section 25-H notwithstanding the fact that the ir names had not been sponsored through employment exchange. Subsequently, when

the management had requested the Employment Exchange to sponsor the name of other workers, the Employment Exchange refused to do so on the ground that the sponsoring is to be done on the basis of seniority. Such a communication was sent as per Letter No.No.Tho.Pa.1/53564/97 dated 30.9.97 issued by the third respondent, namely the Department of Employment and Training. This letter is being sought to be quashed. The further prayer of the petitioner is for a direction to the second respondent, namely, the Management to appoint the workers.

4. A counter affidavit has been filed on behalf of third respondent. It was highlighted that the Employment Exchange can sponsor names in accordance with the seniority, and therefore, letter was issued by the Employment Exchange.

5. Having heard Ms. Sudha Ramalingam, learned counsel appearing for the petitioner and Mr.P.S. Jayakumar, Government Advocate for Respondents 1 and 3 and Mr.V.R. Kamalanathan for Respondent No.2, I am of the opinion that the writ petition is bound to succeed.

6. There is no dispute that the persons on whose behalf the writ petition has been filed by the Union had worked under Respondent No.2. It is no doubt true that some agreement was entered into between the management and the workers, where the management had indicated that the names being sponsored, steps would be taken for employment. In the Division Bench decision in W.A.Nos.1294 to 1299 of 1997, decided on 8.12.1997, it was observed that who had completed 240 days of service were required to be reinstated and even those who had not completed 240 days had the right of being considered on preferential basis in view of Section 25-H. In the Division Bench decision, it was observed that irrespective of the fact whether the retrenched employees had been employed through employment exchange or not, the statutory provisions contained in Sections 25-F and 25-H were applicable. It was categorically observed that even those who had not completed 240 days, the Corporation would offer job to retrenched employees in accordance with Section 25-H of the Act irrespective of the fact whether the workers had been employed through employment exchange or directly, unless the authority comes to the conclusion that the employment of the workers was on the basis of malafides or some ulterior consideration. The Division Bench decision is also applicable to the facts of the present case. Even assuming that the Memora ndum of Understanding cannot be enforced as the employment exchange had not sponsor the names, ratio of the Division Bench decision is applicable.

7. Accordingly, there shall be a direction to the Management to follow the ratio of the Division Bench decision in the aforesaid case and to identify the persons from among the petitioner Union who had completed 240 days and who had not completed 240 days. Those who had completed 240 days shall be reinstated if not reinstated in the meantime, however, without any backwages. On the other hand those who had not completed 240 days shall have preference in the matter of employment in accordance with Section 25-H of the Act. To facilitate the aforesaid process, the Union or the concerned workers shall furnish details of the earlier engagement to enable the management to come to a conclusion as to whether any person had completed 240 days or not. Apart from the above direction, it is also felt appropriate to issue a

direction to Respondent No.3 to sponsor the names of the workers as per the letter already issued by the Management.

8. Subject to the aforesaid directions, the writ petition is disposed of. No costs.

Index : Yes
Internet: Yes

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